

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

BRANDON RAY McKINNEY

PLAINTIFF

v.

Civil No. 08-2003

CAPTAIN CONGER, Sebastian County  
Detention Center; SHERIFF FRANK  
ATKINSON; and BARRY AYERS

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Brandon Ray McKinney filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 on January 10, 2008. His complaint was filed *in forma pauperis* (IFP).

On August 22, 2008, the undersigned entered an order (Doc. 14) granting the defendants' motion to compel. McKinney was directed to provide the defendants with discovery responses by September 8, 2008. On September 26, 2008, defendants filed a motion to dismiss (Doc. 16). In the motion, defendants state they have not received the discovery responses from the plaintiff.

I recommend that the defendants' motion to dismiss (Doc. 16) be granted. This case should be dismissed based on McKinney's failure to comply with the order of the court and his failure to prosecute this action. *See* Fed. R. Civ. P. 41(b).

**The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.**

DATED this 26th day of September 2008.

/s/ *J. Marschewski*  
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HON. JAMES R. MARSCHEWSKI  
UNITED STATES MAGISTRATE JUDGE